CATÓLICA
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ESCOLA DO PORTO

PÁZMÁNY STATE AID LAW FORUM 2025

Private enforcement of EU state aid rules – who, where, why and how can in theory invoke the rights conferred under Article 107/108 TFEU?

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What is the purpose of the private enforcement of EU state aid rules?

- It complements the enforcement power of the Commission
  - This is made more important since the Commission focuses its *ex ante* control on the most distorting cases of state aid
    - Because of the *de minimis* and block exemption regulations
- It preserves the rights of individuals and third parties who are faced with a breach of Article 108(3) TFEU

Who can invoke the rights conferred under Article 108 TFEU?

- Legal standing:
  - Procedural autonomy, equivalence and effectiveness
  - Typically: competitors of the aid beneficiary
    - "directly affected by the distortion of competition"
  - Also: "any parties having a sufficient legal interest in initiating proceedings", even if not "directly affected by the distortion of competition"

Who can invoke the rights conferred under Article 108 TFEU?

- "Any parties having a sufficient legal interest"
  - Third party taxpayers, where the tax or levy to which they are subject forms part of the financing of the unlawful State aid
    - Not necessarily competitors
  - Besides economic interests, also other interests of individuals and organisations can be relevant
    - V.g: environmental organisations promoting environmental protection

Where can the rights conferred under Art. 108 TFEU be invoked?

- Procedural autonomy: it is for the national legal system of each Member State to designate the courts that have jurisdiction
  - In most Member States: both civil and administrative courts may be competent to hear state aid proceedings, depending on the type of remedy requested and the type of aid measure
  - In some Member States: specialised court for state aid matters or exclusive jurisdiction given to chambers of existing courts

Why are the rights granted under Article 108 TFEU being breached?

- Unlawful aid has been granted
  - The measure in question is state aid
    - Notion of state aid (107, TFEU)
  - The measure had to be notified to the EU Commission (108, TFEU)
    - The measure is not existing aid and does not fall under the block exemption or the *de minimis* regulations
  - The measure was implemented without the Commission's authorization
    - Breach of the standstill obligation (108, TFEU)

How can national courts uphold the rights granted by Article 108 TFEU?

- Suspend or terminate the implementation of the measure
- Order the recovery of the sums already disbursed
  - Including the interest that the undertaking would have paid if it had borrowed the amount of the aid on the market ("illegality interest")
  - National prescription periods apply
    - Not the 10-year limitation period provided for by the Procedural Regulation
- Adopt interim measures
  - Prevent the disbursement of the aid
  - Repayment of the aid with illegality interest
  - Provisional transfer of the aid, including interest, on a blocked account

How can national courts uphold the rights granted by Article 108 TFEU?

- Rule on compensation for damages suffered by third parties
  - But: the damage must be quantified and a causal link between the harm and the unlawful aid must be established
  - Loss of profit
    - Easier to prove: where the unlawful aid enabled the beneficiary to win over a contract or a specific business opportunity from the claimant
    - More difficult to prove: when the unlawful aid merely leads to a loss of market share
- According to EU Law, only Member States must pay damages
  - But national law may allow bringing an action for damages against the beneficiary of the aid

Thank you!